

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Aedes De Venustas, Inc.,

Plaintiff,

v.

Venustas International, LLC,

Defendant.

1:07-CV-04530-LTS-THK

NOTICE OF MOTION FOR DEFENDANT'S PARTIAL SUMMARY JUDGMENT

PLEASE TAKE NOTICE that Defendant Batallure Beauty LLC, f/k/a Venustas International, LLC ("Batallure") hereby moves this Court for an order granting partial summary judgment that plaintiff is not entitled to an accounting or award of Batallure's profits. The motion will be heard on Friday, June 27, 2008 at 9:00 a.m., or as soon thereafter as the matter can be heard, before Judge Laura Taylor Swain of the United States District Court, Southern District of New York, Courtroom 17C, 500 Pearl Street, New York, New York 10007.

The motion is based on Fed. R. Civ. P. 56, 15 U.S.C. §1114, 15 U.S.C. §1125, 15 U.S.C. §1117, N.Y. Gen. Bus. Law. §§ 349, 360(1), common law trademark infringement and unfair competition, the memorandum of law in support of the motion, and the Declaration of Kristen McCallion Esq., Declaration of Sam Ghusson, Declaration of Robert G. Shepherd, Esq. and Declaration of Denis McNeill.

Prior to the engagement of Fish & Richardson P.C. as counsel for Defendant, both Plaintiff's counsel and Defendant's counsel, via telephone and written correspondence, used best efforts to informally resolve the issue raised in Defendant's summary judgment motion. When Defendant engaged Fish & Richardson P.C. as new counsel, counsel for the parties had a telephone conversation during which Plaintiff's counsel stated that Plaintiff would continue to seek an award of Defendant's profits. Again, on May 27, 2008, counsel for Plaintiff reiterated Plaintiff's position with respect to seeking an award of Defendant's profits. Because Defendant believes that an award of profits is improper, the parties are at a standstill on this issue, despite the best efforts of Defendant's prior counsel, Defendant's current counsel, as well as counsel for Plaintiff. The parties are sufficiently familiar with each other's respective legal and factual positions at this time that moving forward with a summary judgment motion is proper.

Respectfully submitted,

FISH & RICHARDSON P.C.

Dated: May 27, 2008

By:



David Francescani (DF 9701)
Kristen McCallion (KM 5593)
FISH & RICHARDSON P.C.
153 East 53rd Street, 52nd Floor
New York, New York 10022
Tel: (212) 765-5070
Fax: (212) 258-2291

Attorneys for Defendant

BATALLURE BEAUTY LLC, f/k/a
Venustas International, LLC